

EXHIBIT C

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 Norfolk Division
4 CASE NO. 2:18CV530

5 CSX TRANSPORTATION, INC.,
6 INDIVIDUALLY AND ON BEHALF OF NORFOLK
7 & PORTSMOUTH BELT LINE
8 RAILROAD COMPANY,

9 Plaintiffs,

10 -vs-

11 NORFOLK SOUTHERN RAILWAY
12 COMPANY, NORFOLK & PORTSMOUTH
13 BELT LINE RAILROAD COMPANY,
14 JERRY HALL, THOMAS HURLBUT,
15 PHILIP MERILLI, and CANNON MOSS,

16 Defendants.

17 Zoom Remote Proceedings
18 Wednesday, March 17, 2021
19 1:19 p.m. - 6:37 p.m.

20 VIDEOTAPED TELECONFERENCE DEPOSITION OF ROB GIRADOT

21
22
23 Taken before Robyn Maxwell, RPR, FPR,
24 RSA, and Notary Public in and for the State of Florida at
25 Large, pursuant to Notice of Taking Deposition filed in
the above-mentioned cause.

Job No. CS4501152

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11 Q. Yep. Let me turn to paragraph 7 of your
12 declaration.

13 This paragraph is directed specifically to
14 fees charged by switching railroads in the ports of
15 Wilmington, Savannah and Jacksonville, correct?

16 A. That's correct.

17 [REDACTED]

18

19

20 A. That's correct.

21 Q. And that's with reference to a declaration
22 that you gave a little over a year ago, right?

23 A. I mean, that's in reference to the
24 declaration that I'm making here. I mean --

25 Q. Well, what you're saying here is Mr.

1 Crowley's table is misleading, right? Isn't that really
2 [REDACTED]
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4
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8

9 A. Yeah.

10 Q. Did I read that correctly?

11 A. Yeah, you read that correctly. So I did
12 mention that in that also, yes.

13 Q. Yeah. So have you actually reviewed the --
14 the tariffs with respect to the switching railroads that
15 serve those ports?

16 A. Yeah, I have.

17 Q. And have you read the Port Authority
18 tariffs for each of those ports?

19 A. No, I haven't.

20 Q. You have not. Okay.

21 So when you say it -- that in each of those
22 ports the -- the switch costs includes the rail lift, by
23 rail lift can we agree that that is either picking the
24 container up off or out of a well or the reverse, putting
25 a container into a well, that's the lift that you're

140

1 talking about?

2 A. That's right.

3 Q. Okay. So let me -- let me just start with
4 Jacksonville. Can you pull out Envelope 29.

5 MR. CHAPMAN: Madam Court Reporter, I'm not
6 sure what the next exhibit is, but this will be
7 it.

8 (Exhibit 8 was marked.)

9 THE WITNESS: Okay; this is NPBL028278.

10 MR. CHAPMAN: Yes, that's the correct
11 number for the first page of the exhibit.

12 We know what the number is?

13 THE COURT REPORTER: Eight.

14 MR. CHAPMAN: Eight, okay.

15 BY MR. CHAPMAN:

16 Q. And we'll call this Exhibit 8 to your
17 deposition. On the very first page is the summary of the
18 switching charges in Exhibit 8. Do you see that,
19 Mr. Girardot?

20 A. Yes.

21 Q. And about three or four lines down, you see
22 it says \$88 per container and then the reference to note
23 4?

24 A. Yes.

25 Q. All right. And the -- if you turn to the

1 second page of this, the Jacksonville Port Terminal
2 Railroad appears to be a company that's owned by Watco;
3 is that right?

4 A. That's what it appears to be from this
5 list.

6 Q. And if you could turn to page -- I believe
7 it's page 30 of the actual tariff, which is numbered
8 NPBL028308.

9 A. '308?

10 Q. Yeah.

11 A. Okay. I've got it. "Item 700 for
12 reciprocal switching"?

13 Q. Yes. Thank you. And it describes the --
14 the charge is going to be published in a supplement found
15 at that online location or at the end of this publication
16 for convenience, we've put it on the first page just so
17 it's easy to see.

18 A. Uh-huh.

19 Q. Okay. So is there anything in the
20 reciprocal switching portion of this tariff that says
21 that it includes the rail lift?

22 A. No. But we're not -- but I know, you know,
23 when -- when we move containers in and out of there,
24 we're not charged a rail lift.

25 Q. You're not charged a rail lift by the -- by

1 the Jacksonville Port Terminal Railroad?

2 A. No, this includes everything.

3 (Exhibit 9 was marked.)

4 BY MR. CHAPMAN:

5 Q. So if I could get you to open up Envelope
6 Number 28.

7 A. NPBL08240?

8 Q. Yes, that's correct. That's the first
9 numbered page of this exhibit, which is the terminal
10 tariff published by the Jacksonville Port Authority.

11 A. Uh-huh.

12 Q. Right. And if I could ask you to turn to
13 page 17 of this document.

14 A. Okay.

15 Q. Do you see about the middle of the page it
16 references the numbers 31-210 --

17 A. Yes.

18 Q. -- for the intermodal container transfer
19 facility run by the --

20 A. I see that.

21 Q. -- run by the Port Authority. And then
22 it -- it runs on for a couple of pages.

23 And so if you could go two more pages back,
24 which is page 19 of this document --

25 A. Okay.

1 Q. -- numbered NPBL028258; do you see that?

2 A. Yes, I do.

3 Q. Right. And you see at the top under the
4 heading, "Lift Charge"?

5 A. Yeah, I can see that.

6 Q. It says, "The first lift of a container to
7 or from the railcar \$61.80"?

8 A. I see that.

9 Q. Okay. It -- is it your testimony that CSXT
10 does not pay that charge?

11 A. Well, you know, we don't -- we don't pay
12 that charge and what you're referring to is a
13 different -- it's a different facility than the one you
14 just -- we were just talking about. I just wanted to
15 clarify that.

16 Q. Okay. That's my question; that CSXT does
17 not pay a charge at the terminal that -- that the
18 Jacksonville Port Terminal Railroad services.

19 A. This is not the Jacksonville terminal
20 railroad, Mr. Chapman. This is JAXPORT's tariff. This
21 is the Port Authority's tariff. You're talking about an
22 entirely different facility that's not served by Watco.
23 Watco doesn't go there.

24 Q. What -- what railroad serves the ICTF then?

25 A. So -- CSX Transportation --

1 (Unreportable, indecipherable crosstalk.)

2 THE COURT REPORTER: One at a time.

3 THE WITNESS: CSX Transportation serves the

4 JAXPORT ICTF directly.

5 BY MR. CHAPMAN:

6 Q. And it pays -- and it pays no lift fee at
7 the ICTF or it does?

8 A. We collect -- we -- the -- the -- we
9 collect the lift fee as a separate line item and -- which
10 is paid to us by the steamship line and we -- we --
11 basically it's a mechanism that the steamship line pays
12 the port. It's a separate line item on the bill and it's
13 not -- it's not paid to any short line. It's a different
14 facility. They're not -- you're asking about two
15 different things.

16 Q. Okay. So let me --

17 A. No, what I'm -- you know, what Mr.
18 Crowley's talking about and what I'm talking about in
19 this declaration is this Watco short line switch fee.

20 Q. All right. Let's -- let's talk about
21 Wilmington then.

22 A. Okay.

23 MS. PETERSON: Hey, Mr. Chapman, about how
24 much time do you think we have left on this? Can
25 we take a break at some point soon? We've been

1 going for a bit now.

2 MR. CHAPMAN: Yeah. I think -- I think
3 probably another 15 minutes.

4 MS. PETERSON: Thank you so much.

5 MR. CHAPMAN: But if you want to take a
6 break now, that's fine.

7 MS. PETERSON: Yeah, can we just take five
8 minutes real quick?

9 MR. CHAPMAN: Sure. Sure. That works.

10 MS. PETERSON: All right. We'll be right
11 back.

12 THE VIDEOGRAPHER: We're going -- we're
13 going off the record, and this is the end of Media
14 Unit Number 3. The time is 5:56 p.m.

15 (Recess taken, 5:56 p.m. to 6:06 p.m.)

16 THE VIDEOGRAPHER: We're back on the
17 record. This is the beginning of Medica Unit
18 Number 4. The time is 6:06 p.m.

19 BY MR. CHAPMAN:

20 Q. Mr. Girardot, -- Mr. Girardot, could --

21 UNIDENTIFIED SPEAKER: Ms. Peterson is not
22 able to get off of mute right now.

23 THE VIDEOGRAPHER: All right. One second.
24 One moment. We are going off the record at 6:07
25 p.m.

1 (Recess taken, 6:07 p.m. to 6:08 p.m.)

2 THE VIDEOGRAPHER: We are back on the
3 record at 6:08 p.m.

4 BY MR. CHAPMAN:

5 Q. Mr. Girardot, could you open Envelope 27
6 please.

7 (Exhibit 10 was marked.)

8 BY MR. CHAPMAN:

9 Q. All right. You should have the Wilmington
10 terminal tariff there.

11 A. Yes, I have it.

12 Q. The first page of which is marked as
13 NPBL028362.

14 A. That's -- okay.

15 Q. And this will be, I think --

16 THE COURT REPORTER: Exhibit 9.

17 BY MR. CHAPMAN:

18 Q. -- Exhibit 9. You know, this is my
19 apology. Let's make it 10. The JAXPORT, the
20 Jacksonville Port Authority terminal tariff that
21 Mr. Girardot previously testified did not apply for
22 reference should be marked as Exhibit 9, and I apologize
23 for not mentioning it sooner.

24 So it will be -- the Wilmington Terminal
25 Railroad tariff will be Exhibit 10. And if you'll turn

1 to the third page, Mr. Girardot.

2 A. Yes, sir.

3 Q. You see that the Wilmington terminal tariff
4 is \$80 per container whether empty or loaded?

5 A. Yes.

6 Q. Is there any part of this tariff that says
7 it includes the lift fee?

8 A. Well, it doesn't, but it -- it doesn't say
9 that, but that's not what I said; is the \$80 we pay there
10 includes the lift fee.

11 Q. Okay.

12 A. So you know, I'm sorry that your expert
13 wasn't able to, you know, find out what -- what these
14 private relationships are, but that's, you know -- that
15 includes all the switching and all the lifts.

16 Q. The Wilmington Terminal Railroad operates
17 at Port of Wilmington, correct?

18 A. That's correct.

19 Q. All right. And the Port of Wilmington has
20 a terminal tariff, doesn't it?

21 A. I'm sure that they do.

22 Q. Could you open Envelope 32?

23 A. All right.

24 Q. Do you have the Port of Wilmington Terminal
25 Tariff?

1 A. I do. This is the Port of Wilmington,
2 Delaware.

3 Q. Well, that's not the right one, is it?

4 A. It sure isn't.

5 Q. Okay. My apologies for that.

6 We'll deal with that at another time then.

7 So for reference let's mark that as 11 please.

8 (Exhibit 11 was marked.)

9 THE WITNESS: I guess we won't be going
10 back to that one.

11 BY MR. CHAPMAN:

12 Q. No. It's clearly not the right port. If
13 you could open Envelope 31.

14 A. NPBL0282324.

15 Q. Yes. This is the Savannah Port Terminal
16 Railroad Tariff, correct?

17 A. Yes.

18 MR. CHAPMAN: Let's mark this as
19 Exhibit 12.

20 (Exhibit 12 was marked.)

21 THE WITNESS: Savannah, Georgia.

22 BY MR. CHAPMAN:

23 Q. Yes. And if you could turn to the third
24 page where it lists the switching rates.

25 A. Yes.

1 Q. Do you see the first one listed there is
2 the container, right?

3 A. I see that.

4 Q. \$81.69, correct?

5 A. That's correct.

6 Q. And no indication in this document that
7 that includes the lift fee, correct?

8 A. That's right, but that's why I'm telling
9 you as -- as our, you know, witness, I guess, you know,
10 your expert doesn't have the facts in that that \$80
11 includes all switching and all lift services. That's all
12 we pay.

13 Q. And just so I can understand that, when you
14 say "that's all we pay," is that because you have some
15 side agreement or other agreement either with the
16 railroad or the Port Authority in that port that you're
17 not charged the lift fee?

18 A. We -- we don't have one. I suspect that
19 SAPT has a side agreement with the Port Authority.

20 Q. So if I could ask you to open Envelope 30.

21 All right, and it says NPBL028316.

22 (Exhibit 13 was marked.)

23 BY MR. CHAPMAN:

24 Q. And that's the Georgia Ports Authority
25 terminal tariff?

1 A. That's the Georgia Port Authority terminal
2 tariff for the James D. Mason Intermodal Container
3 Transfer Facility.

4 Q. And is that the facility that is served by
5 the Savannah Port Terminal Railroad?

6 A. I can't really tell you anything about this
7 because our stuff doesn't go through the James D. Mason
8 Intermodal Container Transfer Facility.

9 Q. All right. Where does it go?

10 A. We go to -- we -- ours goes to the Georgia
11 Port Authority. It's called the Chatham ICTF.

12 Q. As opposed to the one in Garden City?

13 A. They're both in Garden City.

14 Q. All right. But there's a separate ICTF in
15 Chatham?

16 A. Yeah. Your expert doesn't know that?

17 Q. Well, I'm asking you, Mr. Girardot.

18 A. Yeah, there's a separate facility that we
19 go in and out of, and the fees for that are outlined in
20 this document that we just talked about, NPBL028324.

21 Q. That's the one that's been marked as
22 Exhibit 12, so that's the Savannah Port Terminal Railroad
23 Tariff?

24 A. That's right. That's -- that's the tariff
25 that applies to our movements in and out.

1 Q. And just so I understand your testimony,
2 you believe that the Savannah Port Terminal Railroad has
3 some arrangement with the terminal operator that allows
4 the CSXT intermodal traffic to be placed on or lifted --
5 lifted -- okay. Let me finish my question. Let me
6 finish my question.

7 A. Okay. Yeah, go ahead. I was trying to
8 save you some time, but go ahead.

9 Q. Let's not have -- let's not have the court
10 reporter fussing at us again, okay?

11 A. All right.

12 Q. Yeah.

13 A. All right.

14 Q. So I'll just try to understand this.

15 You believe that the Savannah Port Terminal
16 Railroad has some arrangement with the terminal operator
17 where CSXT's container traffic is handled such that CSXT
18 does not have to pay a lift charge at the facility in
19 Savannah; is that right?

20 A. Based on my, you know, long-standing
21 conversations over the years, my understanding is SAPT is
22 actually owned by the Georgia Port Authority and that
23 it's just -- they -- SAPT just does the switching for
24 them, right. So they actually pay SAPT and -- and so out
25 of, you know, what SAPT collects, right, they -- they

1 split it up. So that that total amount it cover -- it
2 includes all of the lift services and whatever the
3 switching costs are.

4 Q. And that --

5 A. That's just a vehicle for them to collect
6 the -- the -- all the costs for switching and lifts.

7 Q. And is CSXT billed by what you call SAPT or
8 is it billed by the Georgia Ports Authority?

9 A. We're billed by SAPT.

10 Q. Okay. So let me just kind of reset then
11 back to Wilmington.

12 There's the Wilmington Terminal Railroad.
13 You've testified that their charge includes the lift
14 there. Is there a similar arrangement to your
15 understanding that that -- the entirety of the lift fee
16 is somehow built into whatever you're charged by the
17 Wilmington Terminal Railroad?

18 A. Yes, that's -- that's my understanding.

19 The entirety of it is -- again, my understanding of it is
20 a very similar situation. The port actually owns
21 railroad and they -- you know, they -- they -- the lift
22 costs and the costs of switching is all included in that
23 one number.

24 And I might add because this is a tariff,
25 right, is we actually move a lot of business in and out

1 of the Port of Wilmington where there's no switch charge
2 and no lift charge. This is just the tariff. So it's
3 zero.

4 Q. You mean there's a separate agreement that
5 allows you to --

6 A. For certain traffic there's a separate
7 agreement where there's no switch charge, no lift charge.

8 Q. In container traffic?

9 A. That's correct.

10 Q. And it -- what is the nature of that
11 container traffic, if it's some special type or --

12 A. No, it's regular. It's off ship and moves
13 inland.

14 Q. Is it based on some sort of volume
15 commitments or what?

16 A. No, there's no volume commitment.

17 Q. So just help me understand this. Your
18 testimony is that, in fact, CSXT pays no switching fee
19 for the containers that are handled at the Port of
20 Wilmington, North Carolina?

21 A. That's correct. For the -- for the vast
22 majority of the traffic that's it -- we don't.

23 Q. And who is that agreement with?

24 A. It's with the Port of Wilmington.

25 Q. All right. How long has that been in

1 place?

2 A. Pardon?

3 Q. How long has that agreement been in place?

4 A. It's been in place since probably before
5 2017.

6 Q. That's a private agreement between CSX,
7 though, and the Port Authority?

8 A. Yes.

9 Q. Okay. Can you turn now to paragraph 8 of
10 your declaration.

11 A. Okay.

12 [REDACTED]

13

14

15 Did I read that correctly?

16 A. That's correct.

17 Q. You first talk about the Port of Mobile
18 stating that CSXT does not pay the tariff rate at the
19 Port of Mobile. Correct?

20 A. That's correct.

21 Q. Okay. So this is another private issue
22 contractor arrangement with Mobile?

23 A. Yes.

24 Q. And that's not published anywhere in a
25 tariff, correct?

1 A. That's correct.

2 Q. Would other railroads still have to pay the
3 tariff rate?

4 A. It's actually my understanding that they
5 pay the same rate.

6 Q. And do you know what other railroads serve
7 the Port of Mobile?

8 A. I know that the Canadian National Railroad
9 serves the Port of Mobile.

10 Q. But the published tariff is higher than the
11 negotiated rate that CSX has, correct?

12 A. That's correct.

13 Q. You next mention the Port of New Orleans

14 [REDACTED]

16 A. That's correct.

17 Q. What do you mean by "little to no
18 intermodal traffic"? Is it like a hundred boxes a year
19 or 500 boxes a year?

20 A. I'd say it's -- I'd say in the last -- at
21 the Port of Mobile in the last five years we've handled
22 less than, you know, a thousand containers.

23 Q. And --

24 A. Savannah, again, you know, I mean, we had
25 like a one-off exception, but that's the only one that

1 I'm aware.

2 Q. So when intermodal traffic is handled there
3 at the Port of New Orleans, CSXT pays the Port of New
4 Orleans tariff, correct?

5 A. We don't handle intermodal traffic there.

6 Q. I'm sorry; I thought you just said over the
7 last five years you handled a thousand boxes.

8 A. Yeah. My memory of that is that we didn't
9 pay the tariff.

10 Q. That is, CSXT was able to negotiate some
11 alternative rate with the Port of New Orleans?

12 A. That's correct, yes.

13 Q. And you don't know what that tariff rate is
14 or, excuse me, you don't know what that contract rate is?

15 A. No, I just know it was -- it was similar to
16 this Port of Mobile rate. I remember that. And it's
17 because they have to compete, you know, and Mobile's
18 right next door and -- and they know that nobody could --
19 can -- can move intermodal traffic on a -- on a tariff.

20 Q. But you just -- okay.

21 A. Just like NPBL knows that.

22 Q. But your declaration is that CSXT serves
23 little to no intermodal traffic at the Port of New
24 Orleans, but your testimony is that in the last five
25 years there's been perhaps a thousand containers moved

1 through the Port of New Orleans, right?

2 A. Less than a thousand. I don't know the
3 exact number so I'm giving you a high one, so I -- so I
4 you know, to be sure.

5 Q. And now you're telling us that, in fact,
6 there is a special rate that's been negotiated with the
7 Port of New Orleans. You think it's somewhere in the
8 same ballpark as the rate that is included in your
9 declaration regarding --

10 A. That's what -- that's my -- that's my
11 memory, yes.

12 MR. CHAPMAN: Madam Court Reporter, did you
13 get the end of my question?

14 Port of Mobile.

15 THE WITNESS: That's my recollection,
16 Mr. Chapman. Again, they knew they had to be
17 competitive and they were happy to handle any
18 incremental traffic that they could possibly
19 handle and so they gave us a competitive rate.

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